IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 208 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKHLAL AMRUTLAL SOMANI - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SV RAJU for Appellant(s) : 1,
MR LR PUJARI PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 28/09/2007

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has

challenged the judgment and order of the learned Special Judge, Ahmedabad dated 30th December, 1992 passed in Special Case No.41 of 1990 whereby the trial Court convicted the appellant, herein, for the offence punishable under Section 7 of the Prevention of Corruption Act and sentenced to undergo Simple Imprisonment for a period of one year and to pay fine of Rs.500/- and in case of default to undergo further simple imprisonment for a period of two months. The appellant was also convicted for the offence punishable under Section 13(1)(d)(i) and (ii) and Section 13(2)of the Prevention of Corruption Act and sentenced to undergo Simple Imprisonment for a period of one year and to pay fine of Rs.500/- and in case of default to undergo further imprisonment for a period of two months. The aforesaid sentences were ordered to run concurrently.

2.0 The brief facts giving rise to the present appeal are that one Rameshkumar Amrutlal Modi-original complainant-P.W.-2, herein, at the relevant point of time, used to sell newspapers

and magazines at Bus Stand No.1 i.e. Central Bust Stand at Gitamandir, Ahmedabad. It was the case of the prosecution before the trial Court that the original accused-the appellant, herein, daily used to collect Rs.2/- from P.W.-2 for permitting him to sell newspapers and magazines in the premises of the bus stand since the vendors not having license were not permitted to sell newspapers and magazines in the premises of the bus stand and since P.W.-2 was not having any such license, he had to pay Rs.2/- to the appellant, daily. The other vendors, not having license to sell newspapers and magazines at the Gitamandir bust stand, also had to pay certain fixed amount to the appellant. Being aggrieved with the same, P.W.-2 decided to lodge a complaint with the Anti Corruption Bureau, Ahmedabad.

2.1 Accordingly, on 13.03.1990, P.W.-2 approached Anti Corruption Bureau, Ahmedabad and lodged a complaint under the Prevention of Corruption Act against the appellant. After the

recording of the complaint of P.W.-1 on 13.03.1990, a trap was arranged for 14.03.1990.

2.2 On 14.03.1990, Mr. Jaswantrai Vyas-Investigating Officer-P.W.-3, herein, summoned panchas. On arrival of panchas, P.W.-2 and the panchas were introduced to one another. In pursuance of that P.W.-2 narrated the facts of the complaint in brief and the complaint given by P.W.-2 was read over to the panchas and then panchas signed it. P.W.-2, thereafter, produced two currency notes of Rs.2/- each. Then, the numbers of the said currency notes of Rs.2/- were noted down. The said currency notes were, thereafter, given to one Mr. Bhalchandra Patil, Police Constable for experiment of ultra violet light and anthracene powder.

2.3 Mr. Patil, showed the said currency notes to P.W.-2 and the panchas in normal light as well as in ultra violet light but nothing significant appeared. Mr. Patil, thereafter, smeared the currency notes of Rs.2/- with anthracene powder

and then lightly removed the excessive anthracene powder from it with the help of a cloth and exposed it to normal light as well as to the ultra violet light. When the said currency notes were exposed to the normal light nothing significant appeared, but, when the same were exposed to ultra violet light, dots of white-blue colour appeared on the said currency notes of Rs.2/-. Then, the similar experiment was carried out on the hands of Mr. Patil. When the hands of Mr. Patil were exposed to the normal light nothing significant appeared, but when the same were exposed to the ultraviolet light, dots of white-blue colour appeared on the hands and finger tips of Mr. Patil. Thereupon, Mr. Patil, put the said currency notes of Rs.2/-each, treated with anthracene powder in the pocket of P.W.-2 and P.W.-2 was instructed not to touch the said currency notes until the same were demanded by the appellant. The said paper and cloth were, thereafter, burnt in the presence of the panchas and the bottle of anthracene was kept back in the cupboard. Thereafter, P.W.-2 and the panchas were

given necessary instructions by P.W.-3. P.W.-1 i.e. original Panch No.1 was instructed by P.W.-3 to accompany P.W.-2 and to witness the transaction that may take place between P.W.-2 and the appellant. Thereupon, a preliminary 'Panchnama' was carried out to the aforesaid effect. Then, raiding party and P.W.-2 and panchas, left for Central Bus Stand at Gitamandir, Ahmedabad.

2.4 On reaching Central Bus Stand, Gitamandir, P.W.-2 took out newspapers from a bag and kept the same in his hand and started wandering about Platform No.1 to sell the same. After about five minutes, the appellant came and asked P.W.-2 as to where he had gone yesterday and told that he (the appellant) will not allow P.W.-2 to do business within the premises of the Gitamandir bus stand and then told P.W.-2 to come with him(the appellant)to the Police 'Chowki' situated in the premises of the Central Bus Stand, in the presence of P.W.-1. Then, the appellant took P.W.-2 to the 'Waiting Room' of

the luxury coach and told P.W.-2 to leave the newspapers and magazines there. Thereupon, the appellant took P.W.-2 to the police chowki and there he(the appellant)left P.W.-2 standing alone outside police chowki and returned towards the bus stand. Then, P.W.-1 reached there and P.W.-2 and P.W.-1 returned towards the platform No.1 and there they again met the appellant. At that time, the appellant told P.W.-2 that he had no trust in P.W.-2 and that P.W.-2 has to pay the monthly amount in advance. In reply to that when P.W.-2 told the appellant that he had no money and that he hadn't done any business since morning, the appellant got angry and abused P.W.-2 using filthy language and gave signal to him to put whatever he had in his trouser pocket(the appellant's). Hence, P.W.-2 took out two currency notes of Rs.2/- each, treated with anthracene powder, from the left-hand side pocket of his shirt, and put it in the pocket of the trouser of the appellant. Then, the appellant took out the said currency notes from the pocket of his trouser and put it on the hand-driven cart

carrying water, counted it and then put it in the left hand side pocket of his shirt. In pursuance of that, as per the arrangement, P.W.-2 gave signal to the raiding party and the members of the raiding party immediately rushed to the spot.

2.5 On reaching the spot, the Investigating Officer-P.W.-3, gave his introduction to the appellant. Then, P.W.-1 narrated the transaction which had taken place between P.W.-2 and the appellant and the same was recorded in 'Panchnama'. Thereafter, on instructions of P.W.-3, Panch No. 2 took out three currency notes of Rs.2/- each, from the left hand side pocket of the shirt of the appellant. The numbers of the three currency notes of Rs.2/- recovered from the pocket of the trouser of the appellant were, then, tallied with the numbers already noted down in the preliminary Panchnama and out of three currency notes, numbers of two currency notes were found to be matching with the numbers noted in the preliminary Panchnama.

2.6 Thereupon, the hands of the raiding party were exposed to the normal light as well as to the ultra violet light, but, nothing significant appeared. Thereafter, the hands of P.W.-2 and the appellant were exposed to the normal light as well as to the ultra violet light. When the hands of P.W.-2 and the appellant were exposed to the normal light nothing significant appeared, but, when their hands were exposed to the ultra violet light, dots of white-blue colour appeared on their hands. When the similar experiment was carried out on the currency notes of Rs.2/- recovered from the pocket of the shirt of the appellant and the numbers of which were found to be matching with the numbers mentioned in the preliminary Panchnama as well as on the shirt put on by P.W.-2 and on shirt and trouser put on by the appellant, the same result was found i.e., the presence of anthracene powder was found on them. Thereafter, the signatures of the panchas were obtained on the part of the trouser and shirt of the appellant where presence of anthracene powder was found. Then, the 'Muddamal'

recovered, including the trouser and shirt put on by the appellant, were attached and a Panchnama to the aforesaid effect was prepared.

2.7 In pursuance of that offence was registered against the appellant under the Prevention of Corruption Act. After the completion of investigation and after obtaining sanction, charge-sheet was submitted against the appellant before the trial Court. The trial Court framed, read over and explained charges under Section 7 and Section 13(1)(d)(i), (ii) and (iii) and Section 13(2)of the Prevention of Corruption Act to the appellant. However, the appellant did not plead guilty to the charges and claimed to be tried. Then the trial Court heard all the parties and convicted and sentenced the appellant as stated in Para-1 of the judgment. However, the trial Court acquitted the appellant in respect of charges for offence punishable under Section 13(1)(d)(iii). The aforesaid sentences were ordered to run concurrently. Hence, the present appeal.

3.0 Learned Advocate for the appellant has submitted that the trial Court has committed an error in holding that the appellant was a public servant, during the period from 11.03.1990 to 14.03.1990, within the meaning of Section 2(c)(iii) of the Prevention of Corruption Act, 1988.

3.1 Learned Advocate has submitted that the trial Court ought to have held that the sanction order was not valid since the sanctioning Authority had not applied its mind while passing the sanctioning order.

3.2 Learned Advocate has further submitted that the trial Court ought not to have held that the prosecution has successfully proved that the appellant on 14.03.1990 had accepted an amount of Rs.4/- from P.W.-2, abusing his position as a public servant, as illegal gratification, since the witnesses did not support the case of the prosecution in regard to the verbal demand of bribe by the appellant. In support of his case,

learned Advocate has placed reliance on a decision of the Hon'ble Apex Court in the case of ***"Subash Parbat Sonvane Vs. State of Gujarat"*** reported in 2002 Cri.L.G. 2787 wherein it has been held that mere acceptance of money is not sufficient for convicting accused under Section 13(1)(d)(i) and that there must be evidence on record that accused 'obtained' any amount by corrupt or illegal means, and hence, in a case where complainant as well as panch witnesses do not support the case of the prosecution in regard to the aspect of verbal 'demand' of bribe, and 'acceptance' of the same, the accused deserves to be acquitted.

3.3 Learned Advocate has submitted that the trial Court ought to have held that the prosecution has failed to establish that the appellant had demanded and accepted the amount in question as a motive or reward for doing some favour to P.W.-2, in the exercise of his official duty.

3.4 Learned Advocate has submitted that the trial Court has failed to appreciate the fact that the presumption applicable under Section 20 of the Act is not available for the offence punishable under Section 13(1)(d)(i) and (ii) of the P.C. Act. In support of the same, learned Advocate has placed reliance on a decision of this Court in the case of ***"Manilal Nagardas Parmar Vs. State of Gujarat"*** reported in 1998(1)GLH 44 wherein it has been held that as provided in Section 20(3) of the Prevention of Corruption Act, 1947, the Court may decline to draw a presumption referred to in Section 20(2)(1), if the gratification or thing stated in those two sub-Sections, in the opinion of the Court is so trivial that no inference of corruption may fairly be drawn.

3.5 Learned Advocate has lastly submitted that taking into consideration the long time i.e. of about 17 years which has elapsed from the date of incident as well as the mental, physical and financial agony undergone by the appellant during

the aforesaid period, a lenient view should be taken in regard to the sentences of the appellant. In support of his case learned Advocate has placed reliance on the decision of the Hon'ble Apex Court in the case of ***"Tarsem Lal Vs. State of Haryana"*** reported in 1987 SC 806. In that case the appellant who was a 'Patwari', was convicted by the trial Court under Section 5(2) of the Corruption Act and was sentenced to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.150/-. The appellant was also convicted under Section 161 of the Indian Penal Code and was ordered to undergo Rigorous Imprisonment for one year and to pay fine of Rs.100/-. The order of the trial Court was confirmed by the High Court of Punjab & Haryana. Being aggrieved with same, the appellant approached the Hon'ble Apex Court. The Hon'ble Apex Court taking into consideration the long period of about 14 years which had elapsed from the date of incident till the disposal of the appeal as well as the hardships faced by the appellant and his family members during the

pendency of the said appeal, reduced the sentences of imprisonment to the sentence already undergone by the appellant.

3.6 Learned Advocate has also placed reliance on several other decisions in which the similar view has been taken by the Hon'ble Apex Court as well as by this Court. They are as under,

(i) ***"T.M. Joseph Vs. State of Kerala"*** reported in AIR 1992 SC 1922,

(ii)***"Kewal Saroop Gandotra Vs. State of J & K"*** reported in 1994 SCC(Cri.)163,

(iii)***"Subash Parbat Sonvane Vs. State of Gujarat"*** reported in 2002 Cr.L.J.2787,

(iv)***"Ramjibhai Rupabhai Chauhan Vs. State of Gujarat"*** reported in 2001(0)GLHEL 210322,

3.7 The learned Advocate has also placed reliance on an unreported decision of this Court (Coram : J.R. Vora,J.)in the matter between ***"Harjivanbhai Popatlal Patel Vs. State of Gujarat"*** in Criminal Appeal No.366 of 1989.

4.0 On the contrary, Mr. Pujari, learned APP has supported the case of the prosecution and has stated that after taking into consideration all the facts and circumstances of the case and the documents placed on record i.e. Complaint (Exhibit-13), Panchnama(Exhibit-11) and Seizure Memo (Exhibit-10) etc., the trial Court has passed the order of conviction, and hence, no interference is called for by this Court.

5.0 It was the case of the prosecution before the trial Court that the appellant, herein, on 14.03.1990 had demanded and accepted an amount of Rs.4/- from P.W.-2, for permitting P.W.-2 to sell newspapers and magazines, without license, in the premises of the Central Bus Stand at Gitamandir. The prosecution, in support of its case, has examined three witnesses and has placed reliance on the Complaint (Exhibit-13), Panchnama(Exhibit-11) and Seizure Memo (Exhibit-10). In above view of the matter, here, it would be relevant to refer to deposition of P.W.-1 i.e., original

Panch No.-1.

5.1 P.W.-1 in his deposition has deposed that on 13.03.1990, his Superior Officer Mr. Shukla, informed him that the officials of A.C.B., Ahmedabad had come as they require services of panch and instructed him (P.W.-1) to cooperate with the officials of A.C.B.. Mr. Shukla, also informed P.W.-1 that the officials of A.C.B., shall come to his (P.W.-1's) and Panch No.2's residence in the morning on 14.03.1990 to pick them up for conducting raid. Accordingly on 14.03.1990, P.W.-1 and Panch No.2 were picked up from their respective homes and were taken to the Office of the A.C.B., Ahmedabad by the officials of the A.C.B..

5.2 P.W.-1 has further stated that on reaching Office of the A.C.B., Ahmedabad, Investigating Officer-P.W.-3, herein, introduced him and Panch No.2 to P.W.-2. In pursuance of that P.W.-2 narrated the facts of the complaint in brief and the complaint given by P.W.-2 was

read over to P.W.-1 and Panch No.2 and then they signed it. P.W.-2, thereafter, produced two currency notes of Rs.2/- each and its numbers were noted down in preliminary Panchnama. The said currency notes were, then, given to one Mr. Bhalchandra Patil, Police Constable for experiment of ultra violet light and anthracene powder.

5.3 P.W.-1 has stated that on 14.03.1990 after completing the necessary statutory procedures i.e. experiment of the normal light and ultra violet light, drawing of preliminary panchnama etc., raiding party, P.W.-2 and panchas, left for Central Bus Stand at Gitamandir, Ahmedabad. On reaching Gitamandir, as per the arrangement, everybody took their position. P.W.-1 along with P.W.-2 went to Platform No.-1. Then, P.W.-2 took out newspapers from a bag and kept the same in his hand and started wandering about Platform No.1 to sell the same. After about five minutes, the appellant came and asked P.W.-2 as to where had he gone

yesterday and told that he (the appellant) will not allow P.W.-2 to do business in the premises of the bus stand at Gitamandir. The appellant, thereupon, told P.W.-2 to come with him to the police chowki situated in the premises of the Central Bus Stand at Gitamandir. P.W.-1 has stated that since he was present there, at that time, he followed P.W.-2 and the appellant. The appellant firstly took P.W.-2 to the 'Waiting Room' of the luxury coach and told P.W.-2 to leave the newspapers and magazines there. Thereafter, the appellant took P.W.-2 to the police chowki situated in the premises of the bus stand and there he(the appellant)left P.W.-2 standing alone outside police chowki and returned towards the bus stand. Then, after some time, P.W.-2 and P.W.-1 returned towards the platform No.1 and there they again met the appellant. At that time, the appellant told P.W.-2 that he had no trust in him (P.W.-2) and that he has to pay the monthly amount in advance and in reply to that when P.W.-2 told the appellant that he(P.W.-2) neither had any money nor he had done any

business since morning, the appellant got angry and abused P.W.-2 using filthy language. The appellant, then, gave signal to P.W.-2 to put whatever he(P.W.-2) had in the trouser pocket of the appellant. Hence, P.W.-2 took out two currency notes of Rs.2/- each, treated with anthracene powder, from the left-hand side pocket of his shirt and put it in the trouser pocket of the appellant. The appellant, thereafter, took out the said currency notes from the pocket of his trouser and put it on the hand-driven cart carrying water, counted it and then put it back in the left hand side pocket of his shirt. In pursuance of that, as per the arrangement, P.W.-2 gave signal to the raiding party and the members of the raiding party immediately rushed to the spot.

5.4 P.W.-1 has stated that on reaching the spot, the Investigating Officer-P.W.-3 gave his introduction to the appellant and, then, he(P.W.-1) narrated the transaction which had taken place between P.W.-2 and the appellant and the same was

recorded in 'Panchnama'. In pursuance of that, on instructions of P.W.-3, Panch No. 2 took out three currency notes of Rs.2/- each, from the left hand side pocket of the shirt of the appellant. The numbers of the said three currency notes of Rs.2/- recovered from the appellant were, then, tallied with the numbers already noted down in the preliminary Panchnama and out of three currency notes of Rs.2/-, numbers of two currency notes were found to be matching. Thereafter, the hands of the raiding party were exposed to the normal light as well as to the ultra violet light, but, nothing significant appeared. Thereupon, the hands of P.W.-2 and the appellant were exposed to the normal light as well as to the ultra violet light. When the hands of P.W.-2 and the appellant were exposed to the normal light nothing significant appeared, but, when their hands were exposed to the ultra violet light, dots of white-blue colour appeared on their hands. When the similar experiment was carried out on the currency notes of Rs.2/- recovered from the pocket of the shirt of the

appellant as well as on the shirt put on by P.W.-2 and on shirt and trouser put on by the appellant, the same result was found i.e., the presence of anthracene powder was found on them. Thereafter, the signatures of the panchas were obtained on the part of the trouser and shirt of the appellant where presence of anthracene powder was found. Then, the 'Muddamal' recovered, including the trouser and shirt put on by the appellant, were attached and a Panchnama to the aforesaid effect was prepared.

5.5 At the time of his cross-examination, P.W.-1 stuck to the version given by him in his deposition and the defence failed to bring out anything which could help the appellant.

5.6 So far as the evidence of P.W.-2-original Complainant is concerned, he has fully supported the complaint filed by him which is produced at Exhibit-13. P.W.-2, in his complaint, has stated that the appellant daily used to collect an amount of Rs.2/- from him for permitting him to

sell the newspapers and magazines in the premises of the Central Bus Stand at Gitamandir and being aggrieved with the same he(P.W.-2)lodged a complaint with A.C.B., Ahmedabad. From the evidence of P.W.-2 it is also borne out that on 14.03.1990 when he reached office of A.C.B., Ahmedabad the panchas were called. On arrival of the panchas, they were introduced to P.W.-2. In pursuance of that required statutory procedures for carrying out a raid i.e. experiment of ultraviolet light as well as of normal light and anthracene powder, drawing of preliminary Panchnama etc., were completed by the raiding party, before setting off for raid. P.W.-2 has also supported the case of the prosecution, except, the fact of oral 'demand' and 'acceptance' of bribe money by the appellant. P.W.-2 in his deposition has stated that on the day of alleged incident, he handed over two currency notes of Rs.2/- each, to one porter (Hamal) and the said porter passed on the amount of bribe to the appellant and that he did not admit that he put the amount of bribe in the

pocket of the trouser of the appellant as is stated by P.W.-1. On account of that, P.W.-2 was declared hostile by the trial Court. However, on the aforesaid ground only, the entire evidence of P.W.-2 can't be overlooked. On the contrary, an endevour should be made to take whatever little assistance evidence of P.W.-2 can provide to the case of the prosecution, as per the view taken by the Hon'ble Apex Court in a number of cases that in a case where a witness is declared hostile by the Court than in that case instead of discarding the entire evidence of such witness, whatever assistance evidence of such witness could provide should be taken. Keeping that thing in mind if we take into consideration the entire evidence of P.W.-2 then it transpires that the appellant, in fact, demanded and accepted an amount of Rs.4/- from P.W.-2 on 14.03.1990, though, not verbally, but, through gestures as is deposed by P.W.-1 in his deposition.

5.7 The version of occurrence given by P.W.-1 that the appellant on 14.03.1990 demanded and

accepted an amount of Rs.4/- from P.W.-2, is also supported by evidence of P.W.-3-Investigating Officer who in his deposition has strongly supported the case of prosecution of 'demand' and 'acceptance' of bribe by the appellant from P.W.-2 and the evidence of P.W.-1 and P.W.-3 remains uncontroverted. In that view of the matter here it would be relevant to refer to a decision of this Court in the case of ***"State of Gujarat Vs. Maganbhai Jethabhai Vaghela & Anr."*** reported in 1982(1)GLR 596 wherein this Court at Para-12 has held as under,

> **"12.** The panch is not a trap witness at all. He is not interested in the success of the raid. The members of the raiding party only could be interested in the success of the trap. The complainant could be considered to be a person who is an accomplice and, therefore, his testimony may not be accepted without corroboration. There is no law which requires that an independent and reliable panch also should be corroborated before his evidence is required to be accepted."

5.8 In the case on hand, though, P.W.-2-original complainant did not support the case of the prosecution in regard to the oral 'demand' and 'acceptance' of bribe money by the appellant

and was declared hostile by the trial Court, the case of the prosecution is strongly supported by the complaint(Exhibit-13), Panchnama (Exhibit-11) and Seizure Memo (Exhibit-10) as well as by evidence of P.W.-1 who is an independent witnesses. From the depositions of P.W.-1 it clearly transpires that the appellant demanded Rs.4/- from P.W.-2 for permitting him to sell newspapers and magazines, without having license, in the premises of Gitamandir bus stand. P.W.-2, hence, offered two currency notes of Rs.2/- each, treated with anthracene powder and the same was accepted by the appellant in the presence of P.W.-1 and the appellant was caught red handed while accepting the same and the said currency notes were recovered from the left hand side pocket of the shirt of the appellant, in the presence of P.W.-2, panchas and the raiding party. Hence, from the evidence of P.W.-1 as well as from the Complaint (Exhibit-13), Seizure Memo (Exhibit-10) and the Panchnama (Exhibit-11), the ingredients of bribe i.e. the demand, offer and acceptance are proved beyond doubt by the

prosecution. The evidence of P.W.-1 are natural and trustworthy, and hence, there is no reason to discard the same.

5.9 Since the evidence discussed hereinabove are found to be sufficient in deciding the Appeal, I am not discussing the depositions of other witnesses, as they are not of much relevance.

5.10 As regards the contention raised by the learned Advocate for the appellant that the trial Court ought not to have held that the appellant was a public servant during the period from 11.03.1990 to 14.03.1990 is concerned, here, it would be relevant to refer to Section 2(c)(iii) of the P.C. Act, 1988 which reads as under,

> "**(iii)** any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956(1 of 1956),"

5.11 It is not in dispute that on 14.03.1990 when the appellant was caught red-handed by the Officials of A.C.B., Ahmedabad while accepting an amount of Rs.4/- as illegal gratification from P.W.-2, the appellant was on his duty at Central Bus Stand, Gitamandir. Even, in the sanction order issued by the Competent Authority it has been stated that, at the relevant point of time, the appellant was working in his capacity as a 'watchman' with the Gujarat State Road Transport Corporation which has been duly covered under Section 2(c)(iii) of the P.C. Act, and hence, the trial Court was justified in holding that the appellant was a public servant during the period from 11.03.1990 to 14.03.1990. Hence, the said contention is rejected.

5.12 So far as the contention raised by the learned Advocate for the appellant in regard to the validity of Sanction Order is concerned, the same is required to be rejected since the said contention is raised for the first time before this Court and that, at the relevant point of

time, no such contention was raised before the trial Court. On the contrary, from the record it clearly transpires that when the said sanction order was produced before the trial Court, learned Advocate for the appellant did not raise any objection with regard to the sanction order and accepted the same and in pursuance of that only, the said document came to be exhibited at Exhibit No.16. Therefore, when the appellant did not raise any objection with regard to the Sanction Order issued by the competent Authority and voluntarily accepted the same, at the relevant point of time, it is now not open to him to raise such a contention at this stage. Hence, the said contention is rejected.

5.13 As regards the contention raised by the learned Advocate for the appellant that the trial Court ought not to have held the appellant guilty since the witnesses did not support the case of the prosecution in regard to verbal 'demand' of bribe money by the appellant, is concerned, there is a well settled principle laid down by the

Hon'ble Apex Court through a number of decisions that even in a case where the witnesses do not fully support the case of the prosecution or turn hostile, the evidence of such witnesses may not be overlooked in its entirety but on the contrary whatever assistance such evidence can provide should be taken.

5.14 It is not in dispute that, in the present case, P.W.1 and P.W.-2 did not fully support the case of the prosecution with regard to the verbal demand of money by the appellant and that the original complainant-P.W.-2 was declared hostile by the trial Court. However, at the same time if the evidence of P.W.-1 and P.W.-2 are taken into consideration together it transpires that on 14.03.1990, when P.W.-1 and P.W.-2 again met the appellant on platform No.-1, the appellant told P.W.-2 that he had no trust in P.W.-2 and that P.W.-2 has to pay the monthly amount in advance and when P.W.-2 said that he had no money and that he had done no business since morning, the appellant got angry, abused P.W.-2 using filthy

language and then gave signal to P.W.-2 to put the bribe money in the pocket of his(the appellant's)trouser, in the presence of P.W.-1, and hence, P.W.-2 put the amount of bribe in the pocket of trouser of the appellant. The subsequent recovery of the bribe money from the possession of the appellant and discovery of presence of anthracene powder on the shirt and trouser put on by the appellant as well as absence of any satisfactory explanation on the part of the appellant as to how he (the appellant) came into possession of the amount of Rs.4/- treated with anthracene powder, clearly suggests that the appellant had, in fact, demanded and accepted bribe money, though not verbally, but, through gesture or sign. Hence, the decision of the Hon'ble Apex Court in the case of ***"Subash Parbat Sonvane"***(Supra) relied on by the learned Advocate for the appellant will not apply in the case on hand and the said contention is rejected.

5.15 As regards the contention raised by the

learned Advocate for the appellant that the prosecution has failed to establish the motive for demanding and accepting the bribe by the appellant is concerned, it would be relevant to refer to a decision of the Hon'ble Apex Court in the case of ***"State of Andhra Pradesh Vs. R. Jeevaratnam"*** reported in 2005 AIR SCW 3132. In that case, accused demanded bribe for clearing file of tender of complainant and repeatedly made demands. The complainant, therefore, called the accused in a hotel to give the amount of bribe. When the accused entered into the hotel room, he inquired whether the complainant has brought the amount or not. The complainant offered the money and the same were accepted by the accused. On receipt of the amount, the accused gave assurance that the file of the complainant would be cleared. At that time, the accused was caught red-handed. The Hon'ble Apex Court held that the assurance given by the accused, on receipt of the money, to the complainant that the file of tender shall be cleared, clearly establishes that the amount received by the accused was bribe.

5.16 In the case on hand, from the record it transpires that the appellant used to collect certain fixed amount from P.W.-2 and other vendors and hawkers for permitting them to sell newspapers and magazines in the premises of Gitamandir bus stand, without having any license for the same. The said fact is supported by the evidence of P.W.-1 who in his deposition has stated that when he(P.W.-1) along with P.W.-2 returned to the platform No.1- from police chowki situated in the premises of the Gitamandir bus stand, the appellant told P.W.-2 that he (the appellant) had no trust in P.W.-2 and that P.W.-2 has to pay the monthly amount in advance, failing which he(the appellant) would not allow P.W.-2 to do business there. The utterance of such words by the appellant that “he (the appellant) has no trust in P.W.-2 and that P.W.-2 has to pay monthly amount in advance”, in the presence of P.W.-1 strongly supports the case of the prosecution that the appellant had been regularly demanding and accepting certain amount from not

only P.W.-2 but also from other vendors also for permitting them to sell newspapers and magazines, without any license, in the premises of the Gitamandir bus stand as is stated by P.W.-2 in his Complaint(Exhibit-13). Hence, the said contention is also rejected.

5.17 So far as the contention raised by learned Advocate for the appellant with regard to applicability of presumption under Section 20 of the Act for offences punishable under Section 13(1)(d)(i) and (ii) of the P.C. Act is concerned, it would be relevant to refer to the said Section 20 of the P.C. Act, which reads as under,

> "**Section 20(1)**: Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-Section (1) of Section 13 it is proved that an accused persons has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that

gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be, without consideration or for a consideration which he knows to be in adequate.

(3) Notwithstanding anything contained in sub-Sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-Sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

5.18 The above provision postulates that once 'demand' and 'acceptance' is proved beyond reasonable doubt by the prosecution, then the burden is on the accused to prove the contrary and, if he fails to do so, the Court can draw presumption as provided under Section 20(1) and

(2) of the Act. Section 20(3) of the P.C. Act provides that if in a given case, the Court is of the opinion that the amount in question is very trivial, then the Court can decline to draw the presumption by exercising its discretionary powers.

5.19 In the case on hand, P.W.-2 in his complaint(Exhibit-13), has clearly stated that the appellant daily used to collect Rs.2/- from him and certain fixed amount from other hawkers and vendors for permitting them to carry on the business of selling newspapers and magazines in the premises of the Gitamandir bus-stand, without having any license for the same. The said fact clearly suggests that the demand and acceptance of bribe from P.W-2 on 14.03.1990 by the appellant was not a solitary incident, but, even prior to the filing of the complaint by P.W.-2, the appellant daily used to collect certain fixed amount from P.W.-2 and other vendors and hawkers, under threat and duress. Though, the amount of Rs.4/- alleged to have been accepted by the

appellant from P.W.-2 on 14.03.1990 is not big, the fact remains that the same was not his(the appellant's) legal remuneration. Thus, when it is clearly established that the appellant was constantly engaged in the activity of extorting money from hawkers and vendors, being illegal gratification and that when he has been caught red-handed while continuing the said illegal activity, then, the question of the sum so 'demanded' and 'accepted' by the appellant is being small or large is immaterial. Even, in view of the fact that the appellant has failed to give any satisfactory explanation with regard to the recovery of the amount of Rs.4/- treated with anthracene powder from his possession as provided under Section 20 of the P.C. Act, the trial Court was justified in drawing inference of 'demand' and 'acceptance' of bribe by the appellant. Hence, the decision of this Court in the case of ***“Manilal Nagardas Parmar”***(Supra) relied on by the learned Advocate will not help the appellant, and hence, the said contention is rejected.

5.20 As regards the contention raised by the learned Advocate for the appellant to take lenient view in regard to the sentences of the appellant is concerned, here, it would be relevant to refer to Section 13(2) of the Act which reads as under,

> "**Section 13(2):** Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than **one year** but which may-extend to **seven years** and shall also be **liable to fine**."

5.21 In a given case, the Courts can reduce the quantum of sentence or may even refuse to draw an inference of acceptance of bribe by exercising discretionary powers, if it comes to the conclusion that the amount in question was so meagre that no inference of corruption can fairly be drawn. From the complaints(Exhibit-13)filed by P.W.-2, it clearly transpires that the appellant daily used to extract certain fixed amount from not only P.W.-2 but also from other hawkers and vendors for permitting them to carry on the

business of selling of newspapers and magazines in the premises of the Gitamandir bus-stand without having any license for the same. In continuance of the said illegal activity, the appellant was caught red-handed on 14.03.1990 while accepting the amount of bribe from P.W.-2. Thus, when it is clearly established from the documentary evidence as well as from the evidence of the prosecution witnesses that the appellant had been engaged in the illegal activity of extorting money from poor hawkers and vendors-who have to earn their bread and butter everyday, no leniency can be shown in such a case. Even otherwise, in view of the fact that the trial Court has, already, imposed the statutory minimum sentence of one year on the appellant, no interference is called for by this Court. Hence, decisions of the Hon'ble Apex Court as well as of this Court relied on by the the learned Advocate in the case of ***"T.M. Joseph Vs. State of Kerala"*** (Supra), ***"Kewal Saroop Gandotra"***(Supra),***"Subash Parbat Sonvane"***(Supra), ***"Ramjibhai Rupabhai Chauhan"***(Supra) and in the case of ***"Harjivanbhai***

Popatlal Patel"(Supra)will not come to the rescue of the appellant and the said contention is also rejected.

No further contention has been raised by the learned Advocate for the appellant.

6.0 In view of the above discussion and taking into consideration the facts and circumstances of the case and the evidence available on record, I have no hesitation in holding that the amount of Rs.4/- received by the appellant from P.W.-2 on 14.03.1990 was illegal gratification and that the ingredients of bribe i.e. demand, offer and acceptance has been successfully proved by the prosecution beyond doubt.

7.0 In the result, the appeal stands dismissed. The judgment and order of the learned Special Judge, Ahmedabad dated 30th December, 1992 passed in Special Case No.41 of 1990 stands confirmed. The bail bonds of the appellant stand

canceled. The appellant shall surrender before the Jail / competent Authority within a period of **SIX WEEKS** from today.

(M.D. Shah,J.)

Umesh/